

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF CLARKDALE

**THIS AGREEMENT** is entered into 9th March, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 11-952 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. Such project within the boundary of the Town of Clarkdale has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

NO. 26711  
Filed with the Secretary of State  
Date Filed: 03/09/04

Janice K. Brewer  
Secretary of State

By: Darryl D. Braenevald

7. The work embraced in this agreement to construct pedestrian sidewalks, landscaping and lighting and the estimated costs are as follows:

<b>Construction TRACS No. SL450 01C</b>	
Estimated Construction Cost (including 15% CE cost)	\$1,060,400.00
Federal Aid Funds @ 94.3%	\$1,000,000.00
Town of Clarkdale Funds @ 5.7%	\$ 60,400.00
Total Estimated Town Funds for Construction	\$ 60,400.00

8. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction of the project, the Town will and does hereby designate the State as authorized agent for the Town, and with the aid and consent of the Town and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Town, enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions, and Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation. The State will enter into a Joint Project Agreement (JPA) with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the authorized federal funds available, including construction engineering and administration costs.

### **2. The Town will:**

a. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to incur any expenditure in excess. Such changes require the prior approval of the Town.

b. Prior to the solicitation of bids, deposit funds with the State in the amount determined to be necessary to match federal funds in the ratio required.

c. Acquire the necessary right of way required for project construction and hereby certifies that all necessary rights of way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right of way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area and hereby certifies that all obstructions and encroachments have been or will be removed there from prior to the start of construction.

d. Upon completion of right of way acquisition, provide the State with a temporary construction easement for the project of pedestrian sidewalks, landscaping and lighting.

e. Shall furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at Town's expense.

f. Upon completion of construction, shall provide for, at its own cost and as an annual item in its budget for perpetual and proper maintenance of all pedestrian sidewalks, landscaping and lighting improvements, as required to maintain the safety and visual quality as the project was designed, and established at the completion of the project, to include, but not limited to:

- maintaining healthy landscaping
- operation and cost of irrigation
- operation and cost of lighting
- removal and treatment of weeds
- safe access to pedestrian facilities
- safe access to bicycle facilities

g. Install an State-provided plaque identifying the project as part of the Transportation Enhancement Program.

h. Shall allow free public access to the project improvements during normal business hours.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City/County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect until completion of said Project; provide however, that this agreement, except any provisions herein for maintenance which shall be perpetual, may be cancelled at any time prior to the award of a Project advertisement, with 30 days written notice to the other party. It is understood and agreed that, in the event this agreement is terminated by the Town, the State shall in no way be obligated to maintain said landscaping.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the Town agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the Town will bear all costs associated therewith.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007  
FAX: 602-712-7424

Town of Clarkdale  
Town Manager  
P.O. Box 308  
Clarkdale, AZ 86324

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

---

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF CLARKDALE, ARIZONA**

By   
MICHAEL BLUFF  
Mayor

ATTEST

By   
JOYCE DRISCOLL  
Town Clerk

**STATE OF ARIZONA**  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

**RESOLUTION #1083**

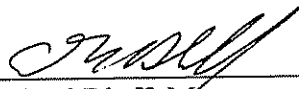
**A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CLARKDALE APPROVING THE ENTERING INTO AN AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION FOR TRANSPORTATION ENHANCEMENT FUNDS FOR THE DOWNTOWN REVITALIZATION PROJECT.**

WHEREAS, the Town of Clarkdale applied for, and received two Transportation Enhancement Grants for the Downtown Revitalization Project; and

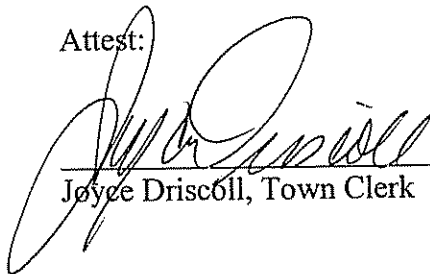
WHEREAS, the Town of Clarkdale, in order to obtain these federal funds for the construction of the project, must sign an intergovernmental agreement with the Arizona Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED THAT THE Mayor and Common Council of the Town of Clarkdale do hereby approve the entering into an agreement with the Arizona Department of Transportation for Transportation Enhancement funds, AG Contract No. KR02-2259TRN, for the Downtown Revitalization Project and hereby authorize the Mayor to sign the contract on behalf of the Town of Clarkdale.

PASSED, ADOPTED AND APPROVED BY THE Mayor and Common Council of the Town of Clarkdale, Arizona on this 13th day of January, 2004.

  
\_\_\_\_\_  
Michael Bluff, Mayor

Attest:

  
\_\_\_\_\_  
Joyce Driscoll, Town Clerk

APPROVAL OF THE TOWN OF CLARKDALE

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF CLARKDALE, and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 22<sup>nd</sup> day of Dec 2003.

Roberts Podium

Town Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855

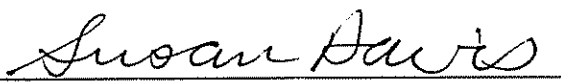
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-2259TRN (**JPA 02-208**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 1, 2004.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED/mjf  
Attachment  
832557